

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KORY T. O'BRIEN,

Plaintiff,

v.

R. TIMMS, *et al.*,

Defendants.

Case No. 2:23-cv-1771-DC-JDP (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART

(ECF Nos. 19, 22)

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 18, 2024, the magistrate judge filed findings and recommendations recommending that Defendants' motion to dismiss, ECF No. 19, be granted without further leave to amend. (ECF No. 22.) The findings and recommendations were served on the parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections to the findings and recommendations. (ECF No. 23.) Defendants filed a response to Plaintiff's objections, and Plaintiff filed a reply thereto. (ECF Nos. 24, 25.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the

1 court finds the findings and recommendations to be supported by the record and by proper
2 analysis, and the findings and recommendations will be adopted, in part. Specifically,
3 Defendants' motion to dismiss will be granted, but Plaintiff will be granted leave to file a second
4 amended complaint. In the findings and recommendations, the magistrate judge explained that "it
5 does not seem that plaintiff's claims can be salvaged" because "plaintiff indicates that he is no
6 longer subject to the conditions he complains of [i.e., being housed in a dormitory unit instead of
7 a single cell] and there is no allegation that defendants, or anyone else, are likely to move him
8 back to the dormitory." (ECF No. 22 at 4.) The magistrate judge concluded that "[u]nless
9 [Plaintiff] can allege that he did, in fact, contract COVID-19 during the time he spent in the dorm
10 or that there is some likelihood of being subjected to those conditions again, his claims are
11 doomed to fail." (*Id.*) In his objections to the findings and recommendations, Plaintiff states that
12 he "was subjected to those conditions again" and "recently was placed in a two-hundred (200)
13 man dorm . . . that was placed on COVID-19 quarantine a month prior to Plaintiff's placement."
14 (ECF No. 23 at 2.) While it is not entirely clear from Plaintiff's objections when he was placed in
15 that dormitory and what role, if any, Defendants played in his placement in that housing unit, the
16 undersigned finds granting leave to amend under these circumstances to be appropriate.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations filed November 18, 2024 (ECF No. 22), are
19 adopted in part; and
- 20 2. Defendants' motion to dismiss (ECF No. 19) is GRANTED;
- 21 3. Plaintiff's First Amended Complaint (ECF No. 12) is DISMISSED, with leave to
22 amend;
- 23 4. Plaintiff shall file a second amended complaint within thirty (30) days from the
24 date of this order; and

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1 5. This matter is referred back to the magistrate judge for further proceedings.
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3 IT IS SO ORDERED.
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5 Dated: September 16, 2025
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7 Dena Coggins
8 United States District Judge
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